

UNITED STATES DISTRICT COURT

SOUTHERN

DISTRICT OF

WEST VIRGINIA

UNITED STATES

EXHIBIT AND WITNESS LIST

V.

GEORGE M. LECCO

Case Number: 2:05-00107-01

PRESIDING JUDGE John T. Copenhaver, Jr.					PLAINTIFF'S ATTORNEY McVey, Miller, Burns	DEFENDANT'S ATTORNEY Zerkin, Austin, Kornbrath
TRIAL DATE (S) Penalty phase 4/28/-5/3/2010					COURT REPORTER Barbara Steinke	COURTROOM DEPUTY Kelley Miller
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES	
1		4/28/2010			Tina Collins	
43		4/28/2010	Yes	Yes	Photograph of Carla Collins	
2		4/28/2010			Gary Epling	
3		4/28/2010			Jessica Collins	
4		4/28/2010			Kristen Epling	
44		4/28/2010	Yes	Yes	Photograph of grave	
	1	4/28/2010			Thomas (Pete) Harmon	
	P-1	4/28/2010	Yes	Yes	Video clip	
	2	4/28/2010			James Cottrell	
	3	4/28/2010			Brandon Bowers	
	4	4/28/2010			Gail Basham	
	5	4/28/2010			Shawn Castle	
	6	4/28/2010			Kenneth Short	
	7	4/28/2010			Dr. Susan Keefe	
	8	4/28/2010			Della Ricche	
	9	4/28/2010			Dr. Mark Cunningham	
	P-2	4/29/2010	Yes	Yes	Patricia Burton's plea agreement	

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.



GOVERNMENT EXHIBIT	
CASE NO.	
EXHIBIT NO.	43



GOVERNMENT EXHIBIT	
CASE NO.	_____
EXHIBIT NO.	44



U.S. Department of Justice

United States Attorney
Southern District of West Virginia

United States Courthouse
300 Virginia Street, East
Charleston, WV 25301
FAX: (304) 347-5104

Mailing Address
Post Office Box 1713
Charleston, WV 25326
(304) 345-2200
1-800-659-8726

November 16, 2005

Troy N. Giatras, Esquire
Giatras & Webb
118 Capitol Street, Suite 800
Charleston, WV 25301

FILED

DEC - 9 2005

TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

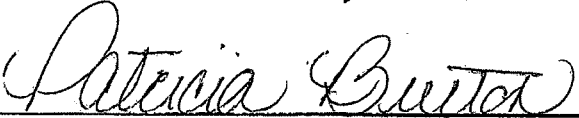
Re: United States v. Patricia Burton
Criminal No. 2:05-00155 (USDC SDWVa)

Dear Mr. Giatras:

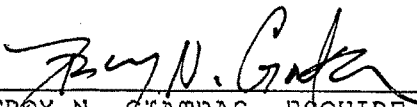
This will confirm our conversations with regard to your client, Patricia Burton (hereinafter "Ms. Burton"). As a result of these conversations, it is agreed by and between the United States and Ms. Burton as follows:

1. **PENDING CHARGES.** Ms. Burton is charged in a four-count Superseding Indictment as follows:

- (a) Count One charges Ms. Burton with a violation of 21 U.S.C. § 846 (conspiracy to distribute cocaine);
- (b) Count Two charges Ms. Burton with a violation of 18 U.S.C. §§ 924(c)(1)(A), 924(j)(1) and 2 (aiding and abetting the use of a firearm to commit murder during a federal drug crime);


PATRICIA BURTON
Defendant

11/17/05
Date Signed


TROY N. GIATRAS, ESQUIRE
Counsel for Defendant

11/20/05
Date Signed

FILE COPY**DEFENDANT
EXHIBIT**

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Re: Patricia Burton

- (c) Count Three charges Ms. Burton with a violation of 18 U.S.C. § 1121(a)(2) (murder of a person assisting a federal investigation); and
- (d) Count Four charges Ms. Burton with a violation of 18 U.S.C. § 1512(k) (conspiracy to obstruct justice by tampering with evidence).

2. **RESOLUTION OF CHARGES.** Ms. Burton will plead guilty to Counts One and Two of the Superseding Indictment, which charge her with violations of 21 U.S.C. § 846 and 18 U.S.C. §§ 924(c)(1)(A), 924(j)(1) and 2, violations of the federal criminal statutes referred to in paragraph 1 above. Following final disposition, the United States will move the Court to dismiss Counts Three and Four in Criminal No. 2:05-00155 as to Ms. Burton.


3. **DEATH SENTENCE.** Count Two is a death-penalty eligible offense. In exchange for Ms. Burton pleading guilty pursuant to the terms of this plea agreement, the United States agrees not to file a death penalty notice under 18 U.S.C. § 3593(a). Absent the filing of a death penalty notice, a death sentence cannot be imposed.

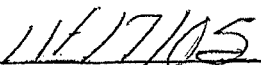
4. **ATTORNEY GENERAL APPROVAL.** It is understood that the Attorney General of the United States has approved this plea agreement, as required by Department of Justice policy.

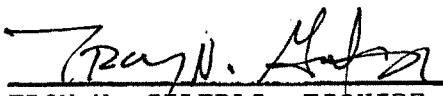
5. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Ms. Burton will be exposed by virtue of this guilty plea is as follows:

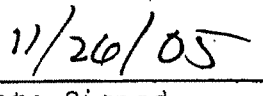
COUNT ONE:

- (a) Imprisonment for a period of up to 20 years;


PATRICIA BURTON
Defendant


Date Signed


TROY N. GIATRAS, ESQUIRE
Counsel for Defendant


Date Signed


Troy N. Giatras, Esquire
November 16, 2005
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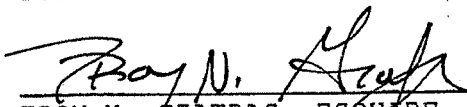
- (b) A fine of \$1 million, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of 3 years;
- (d) A mandatory special assessment of \$100.00 pursuant to 18 U.S.C. § 3013;
- (e) Pursuant to 21 U.S.C. § 862(a)(1), the Court may deny certain federal benefits to Ms. Burton for a period of 5 years; and
- (f) Restitution as may be ordered by the Court pursuant to 18 U.S.C. §§ 3663 and 3664.

COUNT TWO:

- (a) Imprisonment for a period of a minimum mandatory 10 years to life;
- (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of 5 years;
- (d) A mandatory special assessment of \$100.00 pursuant to 18 U.S.C. § 3013; and
- (e) Restitution as may be ordered by the Court pursuant to 18 U.S.C. §§ 3663A and 3664.


PATRICIA BURTON
Defendant

11/17/05
Date Signed


TROY N. GIATRAS, ESQUIRE
Counsel for Defendant

11/26/05
Date Signed

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TOTAL MAXIMUM:


- (a) Imprisonment for a period of up to 20 years on Count One followed consecutively by a minimum mandatory 10 years to life;
- (b) A fine of \$1,250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of 5 years;
- (d) A mandatory special assessment of \$200.00 pursuant to 18 U.S.C. § 3013;
- (e) Pursuant to 21 U.S.C. § 862(a)(1), the Court may deny certain federal benefits to Ms. Burton for a period of 5 years; and
- (f) Restitution as may be ordered by the Court pursuant to 18 U.S.C. §§ 3663, 3663A and 3664.

6. **SPECIAL ASSESSMENT.** Ms. Burton has submitted certified financial statements to the United States reflecting that she is without sufficient funds to pay the special assessment due upon conviction in this case. Ms. Burton agrees that, if incarcerated, she will join the Inmate Financial Responsibility Program, earnings from which will be applied toward payment of the special assessment.

7. **COOPERATION.** Ms. Burton will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision,


PATRICIA BURTON
Defendant

11/17/05
Date/Signed


TROY N. GIATRAS, ESQUIRE
Counsel for Defendant

11/24/05
Date Signed

Troy N. Giatras, Esquire
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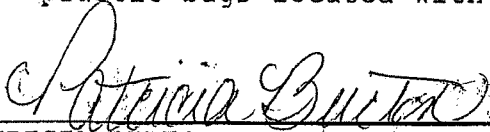
Ms. Burton may have counsel present except when appearing before a grand jury.

8. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Ms. Burton, nothing contained in any statement or testimony provided by her pursuant to this agreement, or any evidence developed therefrom, will be used against Ms. Burton, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

9. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Ms. Burton for any violations of federal or state laws. The United States reserves the right to prosecute Ms. Burton for perjury or false statement if such a situation should occur pursuant to this agreement.

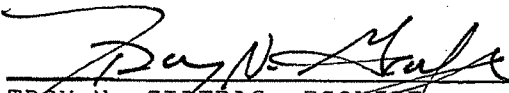
10. **WAIVER OF DNA TESTING.** Ms. Burton acknowledges that she has been advised that the United States possesses items of physical evidence that could be subjected to DNA testing and that the United States has submitted several items for DNA testing, but does not intend to test every item that may potentially contain biological material. The items of physical evidence include, but are not limited to the following:

Sexual assault kit, pulled head and pubic hair from the victim, nail scrapings from the victim, nail found in sock, shoe located in grave, possible cigarette butt found in grave, two shovels, six shirts, one blouse, one pair of pants, two pairs of bluejeans, one sweatshirt, one sock, one body bag, plastic bags located with victim in grave, three swabs from



PATRICIA BURTON
Defendant

11/17/05
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TROY N. GIATRAS, ESQUIRE
Counsel for Defendant

11/26/05
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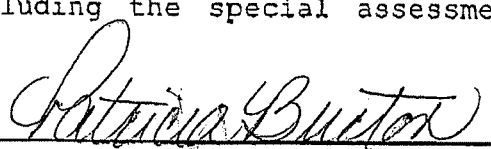
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beer cans, two pairs of tennis shoes, a DNA blood card, and a strand of hair.

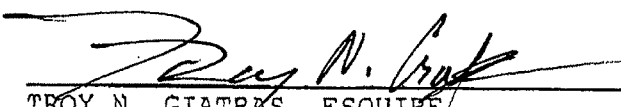
Ms. Burton agrees to waive her right under 18 U.S.C. § 3600 to request DNA testing of evidence in this case, including the right to request such testing after conviction. Ms. Burton specifically agrees that:


- (a) this waiver applies to DNA testing on all items of evidence identified in this Agreement and on any other item of evidence in this case that could be subjected to DNA testing;
- (b) she waives the right to request DNA testing in the current proceedings, in any proceeding following conviction under 18 U.S.C. § 3600, and in any other type of proceeding in which DNA testing may be requested, including motions for collateral relief pursuant to 28 U.S.C. § 2255 or 28 U.S.C. § 2241;
- (c) as a result of this waiver, she will never have another opportunity to have the evidence in this case submitted for DNA testing or to employ the results of DNA testing to support a claim that she is innocent of the offenses to which she has agreed to plead guilty; and
- (d) she has fully discussed the significance of DNA testing with her attorney, and that she is fully satisfied with her attorney's explanation and advice concerning DNA testing and the consequences of waiving the right to request DNA testing.

11. **PAYMENT OF MONETARY PENALTIES.** Ms. Burton agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any


PATRICIA BURTON
Defendant


Date Signed


TROY N. GIATRAS, ESQUIRE
Counsel for Defendant


Date Signed

Troy N. Giatras, Esquire
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restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Ms. Burton further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

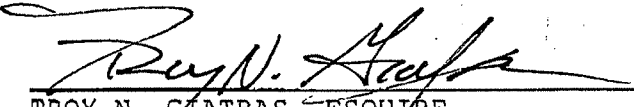
12. **APPEAL OF FINE.** The United States and Ms. Burton agree that neither will seek appellate review of any order of the District Court imposing a fine unless the fine imposed is in excess of the range provided for the offense of conviction by the United States Sentencing Guidelines.

13. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Ms. Burton;


PATRICIA BURTON
Defendant

11/17/05
Date Signed


TROY N. GIATRAS, ESQUIRE
Counsel for Defendant

11/26/05
Date Signed

Troy N. Giatras, Esquire
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- (f) Advise the Court concerning the nature and extent of Ms. Burton's cooperation; and
- (g) Address the Court regarding the issue of Ms. Burton's acceptance of responsibility.

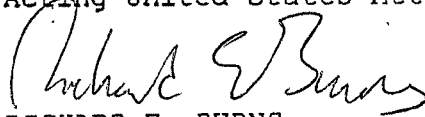
14. **VOIDING OF AGREEMENT.** If either the United States or Ms. Burton violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

15. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Ms. Burton in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Ms. Burton in any Court other than the United States District Court for the Southern District of West Virginia.

Acknowledged and agreed to on behalf of the United States:

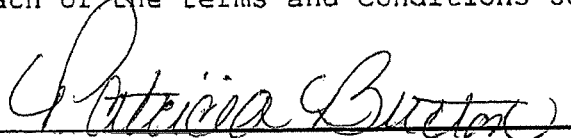
CHARLES T. MILLER
Acting United States Attorney

By:

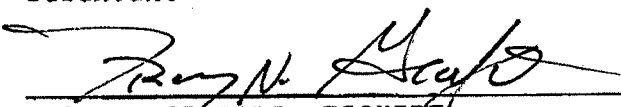

RICHARD E. BURNS
Assistant United States Attorney

REB/plp

I hereby acknowledge by my signature at the bottom of each page of this eight-page agreement that I have read, understand and agree to each of the terms and conditions set forth in this agreement.


PATRICIA BURTON
Defendant

11/17/05
Date Signed


TROY N. GIATRAS, ESQUIRE
Counsel for Defendant

11/26/05
Date Signed